

INTERNATIONAL COURT OF JUSTICE

DECLARATION

OF INTERVENTION BY THE UNITED MEXICAN STATES

filed in the Registry of the Court
on 24 May 2024

APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE IN THE GAZA STRIP

(SOUTH AFRICA v. ISRAEL)

COUR INTERNATIONALE DE JUSTICE

DÉCLARATION

D'INTERVENTION PAR LES ÉTATS UNIS DU MEXIQUE

enregistrée au Greffe de la Cour
le 24 Mai 2024

APPLICATION DE LA CONVENTION POUR LA PRÉVENTION ET LA
RÉPRESSION DU CRIME DE GÉNOCIDE DANS LA BANDE DE GAZA

(AFRIQUE DU SUD c. ISRAËL)

**DECLARATION OF INTERVENTION BY THE UNITED MEXICAN STATES IN
THE CASE CONCERNING THE APPLICATION OF THE CONVENTION ON
THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IN
THE GAZA STRIP (SOUTH AFRICA v. ISRAEL)**

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I. CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

a) Procedural background of the case at hand

1. On 29 December 2023, South Africa filed in the Registry of the Court an Application to institute proceedings against Israel for alleged violations of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to acts threatened, adopted, condoned and carried out against Palestinians in the Gaza Strip.

2. Within this document, South Africa submitted a Request for the Indication of Provisional Measures pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court, in which it requested a total of 9 provisional measures.

3. On 26 January, the Court issued its order indicating provisional measures, concluding that it has prima facie jurisdiction and that the conditions for indicating provisional measures were met.

4. On 5 April, the Court issued its order defining the deadlines for the submission of the Memorial and Counter-Memorial by the parties, setting them for 28 October 2024 and 28 July 2025, respectively.

b) The Convention of which provisions are to be constructed

5. On 6 February 2024, the Registrar addressed a letter to Mexico, being one of the States parties to the Convention to be constructed in the case at hand, about South Africa's Application instituting proceedings against Israel, in which it invoked the 1948 Convention on the Prevention and Punishment of the Crime of Genocide as a basis for jurisdiction and a substantive basis for claims made on the merits. This notification was founded on the terms of Article 63, paragraph 1, of the Statute, that provides:

“[w]henever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.”

6. In light of the above, the Government of Mexico contends that the present case involves legal questions regarding the rights and obligations of State Parties to the Genocide Convention, which have an *erga omnes* character, making them opposable to the international community of States as a whole, as well as questions regarding the prohibition to commit genocide, which is to be considered

a peremptory norm of general international law under the terms of Article 53 of the Vienna Convention on the Law of Treaties.

7. Furthermore, Mexico submits that the duties contemplated in the text of the Convention are to be fulfilled whether genocide is found to exist in times of peace or during armed conflict, that the *mens rea* of genocide can be derived from the general context surrounding the claimed conduct, that impeding access to humanitarian assistance may contribute to the destruction of a protected group, and that the failure to prove the commission of genocide is without prejudice to the determination of other associated variants of responsibility such as conspiracy to commit genocide.

8. Moreover, Mexico asserts the important distinction between the regime of State responsibility for a breach to its obligations under the Convention, and that of the individual criminal responsibility for the commission of the crime of genocide by a person.

9. For that purpose, Mexico seeks to intervene, in order to provide its view on the potential construction of the content of the provisions of the Convention relevant to this case, through the interpretation to be conducted by the Court, taking into consideration that the construction given by the judgment will be equally binding upon it.

c) **Erga omnes provisions of the Genocide Convention**

10. It is important to establish, in the first place, that the Convention on the Prevention and Punishment of the Crime of Genocide contains *erga omnes* obligations, which means that those rules are owed not to any State in particular or, in other words, they do not create a bundle of synallagmatic obligations between every State party to the Convention. Rather, the obligations contained therein are owed to the international community as a whole.

11. This Court has already had the opportunity to address the concept of *erga omnes* obligations in a number of cases, beginning in 1970 in the judgment it delivered to the *Barcelona Traction* case. Therein, the Court recognized the existence of “obligations of a State towards the international community as a whole” that, by their very nature, are the concern of all States. Moreover, it determined that “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection.”¹.

¹ *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, paragraphs 32, 33.

12. The outlawing of genocide and acts of aggression (as well as the rules concerning the basic rights of the human person) were used by the Court as the most evident examples of this kind of obligations.² Even precedent to this case is the advisory opinion delivered by the ICJ on the question of *Reservations to the Convention on the Prevention and Punishment of the Crimen of Genocide*, in which this Court set out that the principles underlying the Convention are binding upon States even without any conventional obligation, and that the condemnation of genocide is of a universal character.³

13. The existence of *erga omnes* obligations as positive rules of law is evidenced not only in the contentious cases and advisory opinions of this Court, but also in the works of other international organizations. The International Law Commission (ILC) presented in 2006 a Report on “Fragmentation of International Law”, in which it concluded that “[s]ome obligations enjoy a special status owing to the universal scope of their applicability”, further adding: “these rules concern all States and all States can be held to have a legal interest in the protection of the rights involved. Every State may invoke the responsibility of the State violating such obligations.”⁴ Important elements are added by the definition provided by the *Institut de Droit International*, under which an *erga omnes* obligation is “[a]n obligation under general international law that a State owes in any given case to the international community, in view of its common values and its concern for compliance, so that the breach of that obligation enables all States to take action”⁵.

14. In previous opportunities, this Court has declared that obligations stemming from the Genocide Convention possess an *erga omnes* character. In the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide between Croatia and Serbia*, this Court upheld that criteria.⁶

15. In the present case, the interpretation and application of the Genocide Convention are a matter of importance to every State party to the Convention, in light of the nature of the obligations contained in said instrument. Thus, Mexico upholds that every State has an interest in the judgment that will be delivered by this Court.

² *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, paragraph 34.

³ *Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15, pages 12, 13.

⁴ International Law Commission, “Fragmentation of international law: Difficulties arising from the diversification and expansion of international law” Report of the Study Group of the International Law Commission. A/CN.4/L.702, 18 July 2006.

⁵ Institut de Droit International, “Obligations and Rights *Erga Omnes* in International Law”, Krakow Session, *Annuaire de l’Institut de droit international* (2005), article 1.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 3, paragraph 87.

d) Peremptory norms of international law of the Genocide Convention

16. Moreover, Mexico stresses that the obligations contained in the Genocide Convention are not only of an *erga omnes* character, but they are also to be considered as peremptory norms of international law.

17. The relationship between these two concepts has been extensively studied by international tribunals and scholars. A definition of *jus cogens* is to be found on the Vienna Convention on the Law of Treaties, which, in Article 53, declares that for the purposes of said Convention:

“[A] peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”⁷

18. As mentioned before, the proscription of genocide is one of the most evident examples of peremptory norms under general international law, along the prohibition of use of force, the right to self-defense and the prohibition of torture.⁸

19. The character of the prohibition of genocide as *jus cogens* has been reaffirmed by this very Court in the *Case concerning Armed Activities on the Territory of the Congo (New Application: 2002)*, where the ICJ recognized that the principles underlying the Genocide Convention “are principles which are recognized by civilized nations as binding on States”⁹.

20. In the present case, Mexico is satisfied that, along with the long-standing criteria of the International Court of Justice, the prohibition of genocide, as contained in the Convention on the Prevention and Punishment of the Crime of Genocide, is a norm of a peremptory character, from which no derogation is allowed whatsoever under international law. In that sense, the rules contained in said Convention possess not only a customary character, but also one which is of interest to the international community as a whole.

⁷ Vienna Convention on the Law of Treaties, Article 53.

⁸ International Law Commission, “Fragmentation of international law: Difficulties arising from the diversification and expansion of international law” Report of the Study Group of the International Law Commission. A/CN.4/L.702, 18 July 2006.

⁹ *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 2006, p. 6, paragraph 64.

II. MEXICO IS A STATE PARTY TO THE CONVENTION

21. Mexico signed the Genocide Convention on 14 December 1948, and later deposited its instrument of ratification on 22 July 1952, as prescribed in Article IX of the Convention. Moreover, Mexico has not made any reservation or declaration to the Convention. On 4 June 1990, Mexico made its sole objection, addressed to the reservation made by the United States Government to the application of Article IX. Mexico noted that its objection should not be interpreted as preventing the entry into force of the Convention between itself and the United States and in any case, this does not negate its interest in the present proceedings. Accordingly, the requirement stipulated in Article 82, paragraph 2(a) of the Rules is met.

III. THE PARTICULAR PROVISIONS OF THE CONVENTION THE CONSTRUCTION OF WHICH MEXICO CONSIDERS TO BE IN QUESTION

22. Pursuant to the requirement stipulated in Article 82, paragraph 2(b) of the Rules of Court, Mexico identifies the following provisions of the Convention as those under consideration by the Court in the present case:

- a. Article I – General Obligations
- b. Article II – Definition of Genocide
- c. Article III – Acts punishable under the Convention
- d. Article IV – Obligation to punish the commission of genocide
- e. Article V – Obligation to enact legislation
- f. Article VI – Trial of persons charged with genocide

IV. ELEMENTS TO BE CONSIDERED IN THIS CASE

a) The existence of genocide in the context of armed conflict and peace

23. Article I of the Genocide Convention provides that “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” In this vein, the Court has established that this Article sets specific obligations that are additional to those outlined in other Articles of the Convention. Notably, it requires the Contracting Parties not to commit genocide, prevent and punish this international crime.¹⁰

¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p 113, paras. 165 – 167.

24. In addition to the analysis of the obligations in Article 1, Mexico considers it is important to examine that the fact that genocidal acts are committed in times of war does not affect the characterization of the crime of genocide. The attack on a civilian population of a particular protected group cannot be attempted to be justified under international law if the intent is to destroy in whole or in part a protected group.

25. In this matter, the Court has held that “states parties to the Convention have ‘expressly confirmed their willingness to consider genocide as a crime under international law which they must prevent and punish independently of the context ‘of peace’ or ‘of war’ in which it takes place.’”¹¹

26. Genocide and war crimes are two international crimes that can be committed in an independent and concurrent manner. For instance, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia has established that there can be cumulative convictions for genocide and murder as a war crime. In this sense, “Genocide requires proof of specific intent while war crimes require proof of the existence of a nexus between the alleged crimes and the armed conflict.”¹²

27. Mexico coincides that genocide can also be perpetrated in the frame of armed conflicts, and that the vulnerability of the civilian populations in such situations, as well as the permissibility of use of force can may be used to attempt to justify atrocities and facilitate the means for committing genocide.

b) The relevance of the context of a State’s conduct as an element to determine the intention to commit genocide

28. Article II of the Genocide Convention establishes that genocide consists of two essential components: the physical element (*actus reus*), which refers to the act committed, and the mental element (*mens rea*). Although these elements are analytically separate, they are interconnected. Establishing *actus reus* may require an investigation into the perpetrator's intent.¹³

¹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, pp. 27-28, para. 74, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 615, para. 31.

¹² *Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A, Appeals Chamber Judgement, 8 April 2015*, para. 616.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 62, para. 130.

29. The elements of the *actus reus* have been developed not only by the Court, but also by the ad-hoc Tribunals and the International Criminal Court. Conversely, the most complex element to analyze is *mens rea*. Therefore, Mexico considers it is important to emphasize the factors that can be considered to determine this element. Establishing this specific intent often poses a significant challenge in legal proceedings.

30. Defined under international law, particularly by Article II of the Genocide Convention, genocide involves specific acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. This framework sets genocide apart from other crimes by highlighting the necessity of a targeted, deliberate attempt to annihilate the identity and existence of protected groups.

31. The core of the crime of genocide lies in the perpetrator's "intent to destroy" the targeted group. This specific intent, or *dolus specialis*, distinguishes genocide from other forms of mass violence or atrocities. It requires proof that the perpetrators aimed to eliminate the group as such, not merely as a byproduct of their actions.

32. Proving the contextual element of genocide involves gathering comprehensive evidence, including documents, witness testimonies, and expert analyses. This evidence must demonstrate both the specific acts and the intent to destroy a national, ethnical, racial or religious group. The process is fraught with challenges, such as the availability of reliable evidence and the safety of witnesses.

33. Mexico claims that recognizing and proving the element of *mens rea* is paramount for preventing and addressing the grave atrocity of genocide, ensuring justice for victims, and upholding international legal standards.

c) The destruction of Cultural Heritage as a conduct generating conditions for the partial or total destruction of a protected group.

34. It is widely understood under international law, and in line with Mexico's submissions *supra*, that the Genocide Convention not only proscribes mass killings, but also a broader array of conducts brought together by the intention to destroy, in whole or in part, a national, ethnical, racial or religious group. It is Mexico's position that the massive destruction of cultural property and the eradication of any cultural symbol related to a group can be construed as acts aimed to accomplish the severe harming of a group, diminishing or even destroying the connection between culture and the self-determination and identity of a population, in terms of Article II(b) of the Convention.

35. Mexico considers, under the construction of this article, that genocidal intent encompasses serious harm against a group of people that may take various forms, including intentionally targeting or destruction of the cultural legacy attached to the identity of a group, as a different set of means to achieve the destruction of the group not only in the form of targeted executions or mass killings.

36. The destruction of cultural sites, museums, and symbols of cultural significance is often “used as a tactic of war to intimidate populations, attack their identities, destroy their link with the past, eliminate the existence of diversity, and disseminate hatred”¹⁴. The language of the Convention was drafted broadly enough for the protection against intentionally targeting or destruction of the cultural legacy attached to the identity of the group, being consistent with the spirit of the law.

37. Further, Mexico stands by the statement of the United Nations Secretary General in the sense that “the protection of cultural heritage, both tangible and intangible, is inseparable from the protection of human lives, and should be an integral part of humanitarian and peacebuilding efforts”.¹⁵ The destruction of cultural property that is intertwined with the fabric core of the targeted group can be understood as similar to cultural cleansing and cultural warfare,¹⁶ and a clear conduct intended to severely harm the targeted group as a part of a policy aimed to the eradication of said culture, resulting in a clear mental harm to the people that it is being severed from their cultural identity.

d) The deliberate obstruction of access to humanitarian assistance as a conduct generating conditions for the partial or total destruction of a protected group and its gender-differentiated effects.

38. In that sense, Mexico upholds the position that denial of access to humanitarian aid, to the extent that it creates conditions of life calculated to cause serious bodily and mental harm to members of a group, as well as to bring about its partial or total physical destruction, must be examined to the light of Article II of the Convention on against Genocide. The policies that imply the denial of humanitarian access result in starvation, which, throughout history, has been used as a means of war and which can be closely linked to the genocidal intent described in the aforementioned Article.

¹⁴ Bokova, Irina. “UNESCO’s Response to the Rise of Violent Extremism: A Decade of Building International Momentum in the Struggle to Protect Cultural Heritage.” J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, no. 5 (2021). <https://www.getty.edu/publications/occasional-papers-5/>

¹⁵ Statement by UN Secretary-General Ban Ki-moon, UNESCO Director-General Irina Bokova and UN and League of Arab States Joint Special Representative for Syria Lakhdar Brahimi: The destruction of Syria’s cultural heritage must stop. March 12, 2014

¹⁶ Special Rapporteur Karima Bennouna, 2016 <https://www.ohchr.org/en/2016/10/un-rights-expert-calls-stop-intentional-destruction-cultural-heritage?LangID=E&NewsID=20767>

39. It is important to note that, even when the Genocide Convention makes no explicit reference to starvation or to the denial of access to humanitarian aid, this Court has no hindrance to analyze how such actions can be instrumentalized to deliberately inflict on a specific group the life conditions signaled in Article II(c). Indeed, starvation can be used to achieve a series of purposes, ranging from killing members of a group to gaining territorial control, controlling or flushing out a population, achieving material extraction, and even as a means of punishment.¹⁷

40. It has been discussed in several *fora* of international law how starvation can be linked to human rights violations. The United Nations Commission on Human Rights stated that “hunger constitutes an outrage and a violation of human dignity and, therefore, requires the adoption of urgent measures at the national, regional and international levels for its elimination.”¹⁸

41. Pertaining the categorization of starvations as a means to create conditions of life calculated to bring about the physical destruction of a group, it is important to note that a subjective element must be demonstrated, materialized in the word *intent* to be found in the formulation of Article II. Moreover, given the nature of starvation, the fact that a Court of law finds this subjective element to exist can be strong evidence of genocidal intent. As judged by the International Criminal Tribunal for the Former Yugoslavia (ICTY), several elements can be taken into consideration to determine the existence of such an intention: “the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”¹⁹

42. The actions taken by a State to prevent a certain group from receiving humanitarian aid, in the context of an armed conflict, brings about differentiated consequences towards specific components of said group. Women and girls, for example, may be subject to specially aggravating conditions due to the impossibility of access to feminine hygiene products and health procedures. The European Commission has stated that “[i]n times of complex crises, [...], women and girls become

¹⁷ Conley, Bridget and de Waal, Alex, “The Purposes of Starvation. Historical and Contemporary Uses” *Journal of International Criminal Justice* 17 (2019), 699-722.

¹⁸ United Nations Commission on Human Rights, Resolution 2001/25, 20 April 2001, paragraph 1.

¹⁹ International Criminal Tribunal for the Former Yugoslavia (ICTY), Judgment, *Jelisić* (IT-95-10-A), Appeals Chamber, 5 July 2001 (*Jelisić Appeal Judgment*), paragraph 47.

extremely exposed to all kinds of risks”,²⁰ “...particularly to infectious diseases while caring for sick family members, as they bear primary responsibilities as caregivers”.²¹

43. Mexico states that, in front of the possibility that a genocide exists, special consideration needs to be given to the differentiated effects that the policies have in already vulnerable groups. This analysis should add up to the consideration as to whether the denial of humanitarian aid can be considered as constituting a breach of Article II(c) of the Genocide Convention.

e) The existence of genocide and its variants of responsibility for commission

44. While Article II of the Genocide Convention lists the means to commit genocide, Article III sets forth a number of associated punishable acts. Within the punishable acts, the convention clearly distinguishes “genocide” as the main one, and the “other acts.”. This is clear from reading Article III along with provisions IV-IX, which refer to “genocide” and “other acts enumerated in article III,” being the main act (a) genocide, and the other acts (b) conspiracy to commit genocide, (c) direct and public incitement to commit genocide, (d) attempt to commit genocide, and (e) complicity in genocide.

45. In this regard, the adjudication of international responsibility in relation to Article III can only be established either by Article III (a) or Article III (b) to (e), but not (a) and the others, when considering the same acts.

46. The foregoing is confirmed by the approach taken in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. In that case, the Court concluded that if a State is found responsible for the commission of genocide, then it is unnecessary to determine whether it may also have incurred on responsibility under Article III, paragraphs (b) to (e), regarding the same acts. The Court explained that responsibility under (a) absorbs that under (b) and (c); meanwhile, holding a State responsible under (a), and under (d) and (e), in relation to the same actions, is untenable both logically and legally.²²

²⁰ European Commission, “Women and girls in Gaza: bombarded, displaced and left without health care” April 2, 2024. https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/stories/women-and-girls-gaza-bombarded-displaced-and-left-without-health-care_en

²¹ UN Women, “Scarcity and Fear: A Gender Analysis of the Impact of the War in Gaza on Vital Services Essential to Women’s and Girls’ Health, Safety, and Dignity - Water, Sanitation and Hygiene (WASH)” April 2024. <https://palestine.unwomen.org/sites/default/files/2024-04/gender-alert-gender-analysis-of-the-impact-of-the-war-in-gaza-on-vital-services-essential-to-womens-and-girls-health-safety-en.pdf>

²² See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 200, at para. 380.

47. In parallel, the Court stated that if no acts of genocide can be attributed to a State, within the meaning of Articles II and III (a), it does not free the Court from the obligation to analyze whether responsibility can be established under Article III, paragraphs (b) to (e).²³

48. From Mexico's perspective, the aforementioned means that a State should not be held responsible, at the same time and for the same actions, for the commission of genocide and for the commission of any of the other acts enumerated in Article III. Nevertheless, this reasoning leads to the corresponding conclusion that a State may be responsible, at the same time, under Article III (a) concerning some actions, and responsible under Article III (b) to (e) with respect to different actions.

49. A further distinction must be noted between Article III paragraphs (a), and (b) to (e): paragraph (a) implies the existence of actions that constitute genocide, while paragraphs (b) to (e) refer to actions not yet constituting genocide, but on the way to, that by themselves are internationally wrongful acts. In the *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, the International Law Commission mentioned that Article III (b) to (e) constituted a particularly comprehensive formulation of rules that specifically prohibit threats of conduct, incitement or attempt, and that are themselves a wrongful act.²⁴ Therefore, although the commission of any of the other acts enumerated in Article III do not constitute genocide, they are internationally wrongful acts by themselves.

50. The Court has previously held the opinion, with respect to paragraphs (b) to (e), that "the 'purely humanitarian and civilizing purpose' of the Convention may be seen as being promoted by the fact that States are subject to that full set of obligations, supporting their undertaking to prevent genocide."²⁵ All the actions contained in Article III, paragraphs (b) to (e), relate to the obligation to prevent genocide, which by definition entails a situation before the occurrence of genocide itself. Considering all the previously mentioned, it is clear that a State may be internationally responsible for conspiracy, direct and public incitement, attempt, and complicity in relation to genocide, even if no genocide takes place.

²³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 200, at para. 381.

²⁴ See International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, U.N. Doc. A/56/10, p. 61, Article 14, at para. 13, footnote 250 (2001).

²⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 114, at para. 167.

f) **International responsibility of a State for failing to prevent and punish the commission of genocide, as a separate regime from the individual criminal responsibility for the crime of genocide.**

51. Articles IV, V and VI are interrelated, as they provide for the punishment and prevention of the crime of genocide. According to Article IV, persons committing any act contained in Article III shall be punished whether they are constitutionally responsible rulers, public servants, or private individuals. Article V requires the parties to enact the necessary legislation to give effect to the convention, and to provide effective penalties for persons guilty of genocide or other acts enumerated in Article III. Article VI establishes that persons charged with genocide or any of the other acts shall be tried by a competent tribunal, either national or international.

52. Article VI sets forth the scenario where the interplay of the three Articles is evident. Article VI demands that a competent tribunal must judge individuals who committed genocide or the other acts enumerated in Article III, which can apply the relevant legislation and impose the relevant punishment (Article V), irrespectively of their position in public or private affairs (Article IV).

53. In this respect, a relevant consideration must be noted: the fact that Articles IV, V and VI focus on individuals does not imply that the Contracting Parties to the Convention may not be subject to international responsibility in relation to those Articles. This Court has recognized that the obligations requiring legislation, providing effective penalties for persons guilty of genocide and the other acts enumerated in Article III, and for the prosecution of alleged offenders are between the provisions of the Convention that impose obligations on States in respect of which they may, in the event of breach, incur responsibility.²⁶

54. The duality of responsibility is a constant feature of international law. The law of State responsibility provides that this field of international law is without prejudice to any question of the individual responsibility under international law. The question of individual responsibility is in principle distinct from the question of State responsibility, and the State is not exempted from its own responsibility for internationally wrongful conduct by the prosecution and punishment of the State officials who carried it out.²⁷

55. Thus, a State may not only be responsible for the commission of genocide under Article III (a), and for the commission of any of the other acts enumerated in Article III, but also for the breach

²⁶ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 109, at para. 159.

²⁷ See International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, U.N. Doc. A/56/10, p. 142, Article 58, at para. 3 (2001).

of Articles IV to VI. A State may be internationally responsible for failing to: 1) punish persons who committed genocide or any of the other acts, disregarding their public or private position (IV); 2) enact the necessary legislation to give effect to the provisions of the Genocide Convention, including the effective penalties for persons guilty of genocide or any of the other acts (V); or 3) try the persons charged with genocide or any of the other acts (VI).

56. Thus, the Court has concluded that “one of the most effective ways of preventing criminal acts, in general, is to provide penalties for persons committing such acts and to impose those penalties effectively on those who commit the acts one is trying to prevent”.²⁸ Articles IV to VI are detailed provisions concerning the duty to punish,²⁹ and the provisions regulating punishment also have a deterrent and therefore a preventive effect or purpose, so they could be regarded as meeting and indeed exhausting the undertaking to prevent genocide.³⁰ Therefore, if a State fails to abide by Articles IV to VI, it could be held responsible for their breach and for the breach of its obligation to prevent genocide, as embodied in Article I of the convention.

V. DOCUMENTS IN SUPPORT OF THE DECLARATION OF INTERVENTION

57. Mexico hereto submits the following documents in order to support its Declaration of Intervention:

Annex 1. Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024 – English version.

Annex 2. United Nations Depository Notification confirming Mexico’s ratification of the Genocide Convention, dated 5 August 1952 – English version.

VI. RESERVATION OF RIGHTS

58. The United Mexican States reserves the right to supplement or amend this Declaration, and any written observations submitted in relation to it, as it considers necessary in response to subsequent developments during the present proceedings.

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 219, at para. 426.

²⁹ See *Idem*.

³⁰ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 109, at para. 159.

VII. APPOINTMENT OF AGENTS

59. The United Mexican States appoints Mr. Alejandro Celorio Alcántara, Legal Adviser to the Mexican Ministry of Foreign Affairs, and Mrs. Carmen Moreno Toscano, Ambassador of Mexico to the Kingdom of the Netherlands, as Agents of the United Mexican States in the present proceedings.

60. Mexico further designates as Advocates-Counselors from the Legal Adviser Office to the Mexican Ministry of Foreign Affairs: Mr. Miguel Angel Reyes Moncayo, Deputy Legal Adviser to the Mexican Ministry of Foreign Affairs; Mrs. Natalia Jiménez Alegría, Deputy Legal Adviser to the Mexican Ministry of Foreign Affairs; Mr. Alfredo Uriel Pérez Manriquez, Director for International Tribunals and Organizations; Mrs. María José Buerba Romero Valdés; Director for the Restitution of Cultural Property and Mr. Max Orlando Benítez Rubio, Director for the Defense of Territory and Sovereignty.

61. Pursuant to Article 40, paragraph 1, of the Rules of Court, is requested that all communications relating to this case be sent to the Embassy of the United Mexican States to the Kingdom of the Netherlands, Nassauplein 28, Den Haag, 2585 EC, Netherlands.

I have the honor to reassure the Court of my highest esteem and consideration.

The undersigned, pursuant to Article 38, paragraph 3, of the Rules of the Court.

The Hague, Netherlands, 24 May, 2024

Alejandro Celorio Alcántara,
Legal Adviser to the Mexican Ministry of Foreign Affairs

CERTIFICATION

The Agent of the United Mexican States certifies that the documents listed below and annexed to the Declaration of Intervention by the United Mexican States are true and accurate copies of the originals of these documents or excerpts thereof.

LIST OF ANNEXES

Annex 1. Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024 – English version.

Annex 2. United Nations Depository Notification confirming Mexico's ratification of the Genocide Convention, dated 5 August 1952 – English version.

Annex 1

Letter No. 161308 from the Registrar to States Parties to the Genocide Convention, sent pursuant to Article 63, paragraph 1, of the Statute of the Court, dated 6 February 2024 – English version.

**By email only**

161308

6 February 2024

Excellency,

I have the honour to refer to my letter (No. 161010) dated 3 January 2024 informing your Government that, on 29 December 2023, South Africa filed in the Registry of the Court an Application instituting proceedings against the State of Israel in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

"Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith".

Further, under Article 43, paragraph 1, of the Rules of Court:

"Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter."

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the "Genocide Convention") is invoked both as a basis of the Court's jurisdiction and as a substantive basis of the Applicant's claims on the merits. In particular, the Applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the Genocide Convention and alleges violations of Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in the case.

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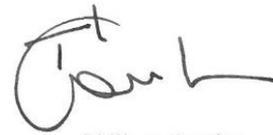
[Letter to the States parties to the Genocide Convention
(except South Africa and Israel)]

COUR INTERNATIONALE
DE JUSTICE

INTERNATIONAL COURT
OF JUSTICE

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Gautier', with a stylized flourish at the end.

Philippe Gautier
Registrar

Annex 2

United Nations Depository Notification confirming Mexico's ratification of the Genocide Convention, dated 5 August 1952 – English version.

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FILE NO. 1

C.N.101.1952.TREATIES

5 August 1952

CONVENTION OF 9 DECEMBER 1948 ON THE PREVENTION AND PUNISHMENT OF THE
 CRIME OF GENOCIDE

RATIFICATION BY MEXICO

Sir,

I am directed by the Secretary-General to inform you that, on 22 July 1952, the instrument of ratification by the Government of Mexico of the Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature at Paris on 9 December 1948, was deposited with the Secretary-General of the United Nations in accordance with the provisions of Article XI of the Convention.

In accordance with the provisions of Article XIII of the Convention, the ratification by Mexico will become effective on 20 October 1952, that is to say, on the ninetieth day following the deposit of the instrument of ratification with the Secretary-General.

The present notification is made in accordance with Article XVII (a) of the Convention.

Accept, Sir, the assurances of my highest consideration.

Constantin A. Stavropoulos

Constantin A. Stavropoulos
 Acting Assistant Secretary-General
 Legal Department